

**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> Overtime and Compensatory Time for Non-Exempt Employees	<b>Policy No.:</b> 510
<b>Title</b>	<b>Pages:</b> 4
<b>Section:</b>	<b>Last Review Date:</b> 4-1-07
<b>Effective Date:</b> 5-1-06	<b>Revision Date:</b>

**1. BACKGROUND**

On April 17, 1989, the Attorney General, of the State of Montana issued an opinion that state and local government employees who are covered by the Federal Fair Labor Standards Act (FLSA), are not subject to the provisions of the Montana Minimum Wage and Hour Act. This opinion allows agencies flexibility in administering overtime provisions for non-exempt employees.

**2. POLICY**

It is the policy of the Office of State Public Defender (OPD) to comply with the FLSA, its regulations (29 CFR 553), state rules (Montana Operations Manual, Volume III, Policy 3-0211), and this policy in the administration of overtime compensation and non-exempt compensatory time. Compensatory time for employees exempt from the FLSA will be administered consistent with the provisions found in the state's Exempt Compensatory Time Policy (MOM, Volume III, Policy 3-0210).

**3. DEFINITIONS**

- A. "Non-exempt compensatory time" means time accrued at a rate of one and one-half hours for each hour of employment for which overtime compensation is required pursuant to the FLSA, its regulations, and this policy. Accrued time may be taken as approved time off at a later date.
- B. "Non-exempt or covered employee" means an employee subject to the overtime provisions of the FLSA and its regulations. It does not mean certain employees exempt from the overtime provisions of the FLSA in a position designated as executive, administrative, professional, or outside salesmen, as these terms are defined in 29 CFR 541.
- C. "Overtime" means time worked by a non-exempt employee in excess of 40 hours in a workweek. The rate of overtime pay will be one and one-half times the employee's regular hourly wage, with the exception of on-call

reimbursement, which will be reimbursed at the regular rate of pay unless the employee is called in to work.

- D. "Workweek" means a regular recurring period of 168 hours in the form of seven consecutive 24-hour periods. The workweek need not be the same as the calendar week. The workweek may begin on any day of the week and at any hour of the day. Once established, a workweek may not be changed unless the change is intended to be permanent.

#### **4. PROCEDURE**

- A. The Office of State Public Defender may grant non-exempt employees who work overtime either cash overtime pay or non-exempt compensatory time off.
- B. If a covered employee would like to accrue and use non-exempt compensatory time, the covered employee must request this option by completing the "Overtime/Compensatory Time Selection" agreement (Attachment A) and returning it to the appropriate supervisor and the OPD Human Resource Office. Covered employees will be paid cash for overtime hours worked unless they complete the agreement. A new employee will make their request at the time of hire. Employees electing to receive non-exempt compensatory time may change their selection to receive overtime on a quarterly basis, such change to be effective with the pay periods of January 1, April 1, July 1 and October 1 unless approved by the immediate supervisor.
- C. The Office of State Public Defender may, at any time, pay cash for all or any portion of a covered employee's accrued non-exempt compensatory time balance.
- D. All hours worked in a pay status, with the exception of on-call hours, are counted as hours worked for the purpose of calculating a workweek for overtime pay requirements. A supervisor may adjust a covered employee's work schedule in a workweek or require the employee to take time off without pay so that the employee does not become eligible for the payment of overtime or the accrual of nonexempt compensatory time.
- E. Overtime and non-exempt compensatory time is earned and recorded on the time and attendance form in no smaller than one-half hour increments.
- F. Non-exempt compensatory time must be taken off in no less than one-half hour increments. The employee's immediate supervisor must approve requests for use of compensatory time off in advance.
- G. A non-exempt employee may accrue a maximum balance of 120 hours of

non-exempt compensatory time. When the non-exempt compensatory time balance exceeds 120 hours, the covered employee will be paid cash overtime compensation.

- H. If a non-exempt employee changes from non-exempt to exempt status through a personnel action such as a promotion, or the employee terminates employment with OPD, the office will cash out any unused non-exempt compensatory time.

## **5. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable

Questions about the administration of overtime compensation or non-exempt compensatory time in lieu of overtime compensation should be discussed with your immediate supervisor or with the Human Resource Officer at:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6091

## ATTACHMENT A

### OVERTIME/COMPENSATORY TIME SELECTION

For completion by employees in non-exempt status.

NAME: \_\_\_\_\_

JOB TITLE: \_\_\_\_\_

FISCAL YEAR: \_\_\_\_\_

Select one of the following options for your preferred compensation of overtime worked for the fiscal year, or until a new form is submitted.

1. Overtime Pay: \_\_\_\_\_  
(Pay at one and one-half times your hourly rate.)
2. Compensatory Time: \_\_\_\_\_  
(Time off at one and one-half hours for every overtime hour worked.)

I understand that the Office of the State Public Defender management reserves the right to approve the granting of FLSA compensatory time in lieu of overtime pay. The Office of the State Public Defender may at any time pay cash for all or any portion of a covered employee's accrued FLSA compensatory time. I may submit a selection form reversing my previous selection on a quarterly basis, effective with the pay periods of January 1, April 1, July 1, and October 1.

_____ Employee's Signature	_____ Date
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APPROVED BY:

_____ Supervisor's Signature	_____ Date
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This form must be signed and returned to:  
Office of the State Public Defender  
Human Resource Office  
44 West Park  
Butte, MT 59701